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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058315
Party	Plaintiff State of Michigan
Correspondence Address	TONI L HARRIS TRANSPORTATION DIVISION VAN WAGONER BLDG, 425 W OTTAWA 4TH FLOOR LANSING, MI 48913 UNITED STATES harrisT19@michigan.gov, lubitzs@michigan.gov
Submission	Other Motions/Papers
Filer's Name	Toni Harris
Filer's e-mail	harrisT19@michigan.gov, lubitzs@michigan.gov
Signature	/Toni Harris/
Date	04/28/2016
Attachments	MSJ2 Brief in Reply.pdf(211095 bytes) Exhibit 45.pdf(301845 bytes) Exhibit 46.pdf(413406 bytes) Exhibit 47.pdf(553653 bytes) Exhibit 48.pdf(565962 bytes) Exhibit 49.pdf(595523 bytes) Exhibit 50.pdf(35358 bytes) Exhibit 51.pdf(431194 bytes) Exhibit 52.pdf(92284 bytes) Exhibit 53.pdf(77270 bytes) Exhibit 54.pdf(90670 bytes) Exhibit 55.pdf(87671 bytes) Exhibit 56.pdf(80966 bytes) Exhibit 57.pdf(97049 bytes) Exhibit 58.pdf(69914 bytes) Exhibit 59.pdf(81041 bytes) Exhibit 60.pdf(80573 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

State of Michigan)	
)	
Petitioner,)	Reg. Nos.: 3992159
)	3348635
)	
v.)	
)	
M22, LLC)	Proceeding: 92058315
)	
Respondent.)	
)	
_____)	

**PETITIONER STATE OF MICHIGAN’S BRIEF IN REPLY TO
RESPONDENT’S RESPONSE TO THE STATE’S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON CLAIMS FOR GOVERNMENTAL INSIGNIA
AND FALSE SUGGESTION OF A CONNECTION**

Respondent’s allegations of deliberate delay by the State are unfounded and have no basis in fact. The facts show that any delay in scheduling the State’s deposition was the direct result of Respondent inexplicably doing nothing for five weeks after the Board quashed the Respondent’s original deposition. The State, on the other hand, has responded to discovery requests, produced documents, and scheduled depositions despite Respondent’s continuing combativeness and refusal to cooperate in efforts to mutually agree on deposition dates. For purposes of the claims at issue, further discovery will not help, as the facts established by the State on its use of its trunkline route marker design and the fame of the design, which uniquely and unmistakably points to the State, are undisputed and even conceded by Respondent. The only issues before the Board are questions of law on whether the State’s sign design constitutes “other insignia” and whether the State’s sign falsely suggests a connection with the State. Based on applicable law and the lack of material factual issues in dispute, the legal questions weigh decidedly in the State’s favor.

A. Respondent's allegations of deliberate delay are baseless.

Respondent's assertion that the State filed its summary judgment motions to delay the case and avoid discovery is patently false. Such a delay would be contrary to the State's goal to expeditiously resolve the case or, minimally, narrow the issues for trial. To avoid delay, the State has timely responded to all discovery requests in accordance with applicable rules and produced more than 600 pages of documents. In fact, it is Respondent who has delayed discovery by doing nothing. Since the case began, Respondent has noticed only one deposition — an improper corporate deposition of the State, served on July 7, 2015 with a date unilaterally set by Respondent. On July 22, 2015, the Board conducted a telephone conference with the parties and confirmed that an order quashing Respondent's deposition notice would be entered. To the State's surprise, over the next five (5) weeks, Respondent inexplicably failed to serve a revised deposition notice or contact the State about rescheduling the deposition. Meanwhile, the State's Motion for Partial Summary Judgment on its Unlawful Use in Commerce claim was prepared and filed on August 28, 2015. (Doc. 39.) The State believes the argument addressed in that motion is dispositive and accordingly prioritized its filing.

While the case was suspended pending the outcome of the Motion, the State's counsel continued researching facts and case law pertaining to its claims for government insignia and false suggestion of a connection. Upon receiving the Board's order denying the parties' motions and narrowing the issues for trial, the State's counsel worked to prepare and file the pending summary judgment motion. As before, the purpose of the State's motion is to resolve the case without the need for trial or, at a minimum, narrow the issues for discovery and trial. In addition, the State responded to additional discovery requests served by Respondent and, despite Respondent counsel's continuing and unnecessary

combativeness and unreasonableness, worked to schedule depositions of the parties in accordance with the Board's Order.¹ (Ex. 45.)

Without question, the State has neither delayed nor hindered discovery. There would be no benefit to the State to do so because the State has every reason to obtain an efficient and expeditious resolution of this case, which is the purpose of the State's summary judgment motions that clearly have a good faith basis in law and fact. Respondent's unexplained five-week hiatus is a "delay" occasioned solely by its own dilatory conduct. However, because there are no material factual disputes relating to the State's claims that are the subject of the instant motion, a deposition of the State is irrelevant to the legal questions presently before the Board, which weigh decidedly in favor of the State.


B. No material factual issues exist on the State's government insignia claim, and under relevant case law the Marks must be canceled.

In response to the State's Motion, Respondent does not dispute material facts as set forth by the State, namely that the Marks are identical to the State's state trunkline route marker design, which distinguishes authority over the road from a U.S. interstate route or a county road over which the State does not have authority. Further, Respondent does not dispute that State law vests authority in the State over the trunkline routes and mandates the State's route marker design and placement solely on trunkline routes. Under State law, the State cannot place its trunkline route marker design on county roads, interstate

¹ On March 9, 2016, without serving a new corporate deposition notice outlining the topics, Respondent demanded that the State provide deposition dates for designees that the State could not identify without the list of topics. (Ex. 46.) Despite the State's request for topics and to meet and confer on mutually agreeable dates, Respondent unilaterally set the deposition date for Sunday, April 10, 2016, then repeatedly insisted that the designee be made available on April 9th. (Exs. 47-49.) The State notified Respondent that due to travel schedules, the State's designee could not prepare for and attend a deposition until late April. (Ex. 50.) When Respondent refused to provide deposition dates for its founders, the State requested dates in early May, and Respondent did not reply. (Exs. 50-51.)

highways, or other roads over which it has no authority.

Instead, Respondent disputes the legal question of whether the Marks consist of or comprise “other insignia” precluded from registration under Section 2(b). Contrary to Respondent’s assertions, unsupported by any legal authority, neither the Lanham Act nor the Board requires an extremely narrow interpretation or limits the term “other insignia” to the Great Seal of the United States, the Presidential Seal, and seals of government departments. Rather, these are merely examples of devices that represent governmental authority. *In re U.S. Dept. of Interior*, 1964 WL 8039, *2; 142 U.S.P.Q. 506 (T.T.A.B. 1964) (referring to other insignia of authority “such as” the Great Seal, the Presidential Seal, and other government departmental seals); T.M.E.P. 1204.02(a). Further contrary to Respondent’s contentions, the Board did not hold that these examples function solely as indicators of government authority or that such is a prerequisite of “other insignia.” In *In re U.S. Dept. of Interior*, the Board interpreted the term “other insignia” in Section 2(b) to mean “emblems of national authority,” but not “department insignia” used to identify a government service or facility. *Id.* at 2.

Here, the State’s sign design does not identify a governmental department or facility, such as the U.S. Army or a police department, and Respondent’s claim that the State’s sign identifies a facility is a farce. Thousands of miles of trunkline routes throughout the State do not constitute a “facility” as the term has been applied to facilities such as the U.S. Capitol Building and the Statue of Liberty. A reference to , regardless of the number below the “M,” does not direct one to the address of a particular facility, but rather generally denotes a state trunkline understood to be operated and maintained by the State of Michigan as opposed to the federal government or a municipality. Clearly, the State’s insignia does not denote a facility or service of any particular State department,

unlike the United States Capitol Building, but rather the State's authority over thousands of miles of trunkline routes throughout the State.

Respondent also claims, without any authority, that governmental insignia cannot be functional. To the contrary, all governmental insignia, like flags and coats of arms, are functional in that they depict governmental authority. The State's route marker design functions in the same way. Obviously, the route marker design, i.e., a black square with a white diamond and an "M" at the top, has no guidance function. The design is required by law and represents the State's authority over the road under State law, regardless of the route number. Otherwise, if governmental authority is irrelevant, and signs are intended only for guidance, road signs would consist solely of a route number. Instead, the route marker design, regardless of the number, emblemizes State governmental authority, rather than county or federal authority.

In the instant case, the Marks at issue protect all aspects of the State's authority as denoted by its route marker design, including the black square, centered white diamond and "M" in the top corner:

Registration 3992159 (Retail Mark): Description of Mark: The color(s) black and white is/are claimed as a feature of the mark. The mark consists of a small, black, stylized letter "M" above a large, black number "22", within a white diamond, on a black square background.

Registration 78963038 (Apparel Mark): Description of Mark: Color is not claimed as a feature of the mark. The mark consists of an unmounted square street sign with a centered diamond containing M 22 and with M22online.com in the bottom border of the square.

By its actions, Respondent concedes that the route number below the "M" does not matter for purposes of the trademark registration. Respondent has sued others for using the State's route design with various numbers on grounds that the route marker design, *regardless of the route number*, infringes the Marks and creates a likelihood of confusion. Indeed, Respondent's threats to sue others who have used the black square/white

diamond/upper center “M” design, no matter the route number, demonstrate that the highway number is irrelevant, and the predominant and critical feature of the Marks are the features that duplicate the State’s authority as emblemized in its trunkline route marker insignia.


Without question, the State’s route marker insignia emblemizes the State’s authority over trunkline routes, rather than a State department service or facility, as the terms have been consistently applied by the Board and courts. Respondent’s Marks, which are identical to the State’s design, protect “other insignia” that are precluded from trademark protection. Consequently, the State’s Motion should be granted and the Marks should be canceled.


C. There are no material factual disputes pertaining to the State’s false suggestion of a connection claim and, under applicable law and relevant authority, the Marks must be canceled because they create a false suggestion of a connection to the State.

Here again, Respondent failed to dispute the facts as set forth in the State’s Combined Motion and Brief regarding national recognition of the State’s route marker design and its unmistakable association with the State. Respondent also failed to dispute, because it understandably could not, that (i) the State is an institution, for purposes of Section 2(a), (ii) the State is the prior user of its trunkline route marker design, (iii) the Marks are the same as the State’s sign design, and (iv) the State is not connected with Respondent’s business.


Instead, Respondent misconstrued the law and misapplied it to the unrefuted facts. First, the State is not required to show that the State *is* its route marker design. (Response Brief, page numbers not provided, see Section IIA, ¶ 2.) Further, a false suggestion of a connection claim does not require that purchasers of Respondent’s apparel presume that

Respondent has a connection with the State. (Response Brief, page numbers not provided, see Section IIB, ¶ 1.)

Rather, the law requires, and there is no material factual dispute, that the State's route marker design is a symbol of and points uniquely and unmistakably to the State, as demonstrated not only by consumers who profess their appreciation of the State on Respondent's Facebook page, but even more tellingly by Respondent's admitted intent to draw a direct connection to and express a shared passion for the State. Notably, other states around the country have kiteboarding, sailing, surfing, fly-fishing and other recreational activities. Yet, Respondent failed to demonstrate, because it cannot, that kiteboarders and surfers in California, for example, connect the Marks to such activities in California or other areas around the country or the world for the plain and simple reason that  points uniquely and unmistakably to the State of Michigan.

For purposes of responding to the State's Motion, Respondent self-servingly disputes that the Marks point uniquely and unmistakably to the State. However, Respondent's new position contradicts its prior admissions and overwhelming unrefuted evidence that the Marks are *intended* to point uniquely and unmistakably to the State. The fact of the matter is that Respondent has failed to show or even suggest that  has any other meaning, or that it is perceived by consumers to have another meaning, unlike Notre Dame. Further, the documents submitted by Respondent as Exhibit B to its Response have no bearing on this issue. The first page appears to show Respondent's logo above its bricks and mortar store in Traverse City, Michigan. The second and third pages are posts by Respondent advertising its own products and services. The last three pages merely show products sold by Respondent. Notably, none of the documents in the Exhibit were produced by Respondent in discovery. Nevertheless, as explained in the State's Motion and Brief, Respondent's use of the State's trunkline sign design cannot establish that the Marks point

uniquely to Respondent. (Motion and Brief, p. 22.)

Also noteworthy is that, in its Response, Respondent does not deny or refute that it intended to identify with the State or trade on the goodwill and publicity associated with the State's trunkline route design . Nor did Respondent deny that it has threatened to sue others for using the State's sign in connection with the State. Respondent's admitted intent to refer to the State, and Respondent's threats to sue others for using the State's sign design to draw a connection to the State, demonstrate that Respondent knows full well that the Marks point uniquely and unmistakably to the State. The unrefuted evidence shows that Respondent and consumers clearly recognize that a connection between the Marks and the State is not just presumed, but rather intended, expected, and accomplished.

D. Respondent's reliance on trademark registrations for signs not identical to, and having no reference to, existing road signs is misplaced.

Respondent's reliance on registered trademarks featuring signs is misplaced. First, the registrations featuring Route 66 as registered are not existing sign designs in use on existing roads. Route 66 is no longer an established route or an insignia of authority, but rather a historical designation having no authoritative effect. Further, the shape of a shield with a design unlike any existing road sign design is irrelevant. (Exs. 52-54.) Second, the registration for PRODUCTIONS 495 is not duplicative of an existing U.S. interstate route sign design. (Ex. 55.) Again, the shape of a shield is of no moment. Likewise, registrations for INTERSTATE IWS, INTERLOCK, HWY 1, US-1 and HERITAGE ROUTE 23 on shields are not duplicative of an existing road sign in use on any road or indicative of any government authority. (Exs. 56-60.) Clearly, these trademark registrations have no bearing on the facts in this case.

E. Summary judgment in Respondent's favor is not supported by facts or law.

Respondent asserts that the record is sufficient as long as the Board intends to grant

summary judgment in its favor and deny the State's Motion. Otherwise, Respondent insists that it should be allowed to complete discovery before the Board rules on the State's government insignia and false suggestion claims. However, a decision on the government insignia claim rests solely on questions of law to be decided by this Board. Similarly, the false suggestion claim depends solely on questions of law because Respondent cannot overcome its own admissions, as clearly understood by consumers, which demonstrate that the Marks point uniquely and unmistakably to the State and create a presumption of a connection with the State, in accordance with Respondent's intent.

The government insignia claim is a legal question based on unrefuted facts pertaining to State law mandating the State's authority over the roads under its jurisdiction and placement of the State's road sign design on only those roads that are State trunkline routes. As for the State's false suggestion of a connection claim, Respondent understandably failed to create material factual disputes as to whether the Marks point uniquely and unmistakably to the State and as to whether a connection with the State is presumed. Such was an impossible task for Respondent in light of its unequivocal admissions that it adopted the State's sign design with the intent refer to Michigan and to communicate a shared passion for Michigan. Clearly, Respondent knew that the Marks point uniquely and unmistakably to the State and that a connection with the State is intended; the unequivocal statements of consumers evidencing the indelible connection of the Marks to the State and the popularity and recognition of the State vis-à-vis the State's sign design confirm as much. Respondent's failure to raise material factual disputes with additional evidence is not the fault of the State or a result of not deposing the State. Plain and simple, no material factual issues exist because of Respondent's admissions that they adopted the State's sign design with the intent to trade on a connection to the State that was already long-established by residents and tourists alike for nearly 100 years. Thus,

there are no factual or legal bases on which to dismiss the State's claims in favor of Respondent.

As explained above, the State's purpose in filing its summary judgment motions is to resolve the case as efficiently and expeditiously as possible, not to delay the case, which would not benefit the State in the least. Certainly, dismissing the State's claim on such grounds is not warranted, and it is clear that the instant motion is timely and has a good faith basis in law and fact. The irrefutable facts and law weigh decidedly in favor of the State and, consequently, summary judgment in favor of the State is warranted.

RELIEF REQUESTED

Based on the foregoing, in conjunction with the State's Combined Motion and Brief for Partial Summary Judgment, there are no material factual disputes on matters relating to the State's government insignia claim under Section 2(b). All questions of law weigh decidedly in favor of the State and, therefore, because the State's road sign design is a government insignia precluded from trademark registration under Section 2(b), the Marks must be canceled. Similarly, there are no issues of material fact as to whether the Marks falsely suggest a connection with the State, as Respondent clearly intended that consumers draw a connection between the Marks and the State. Accordingly, the State respectfully requests that this Board grant its Motion for Partial Summary Judgment and cancel the registrations at issue.

Respectfully submitted,

By: /s/Toni L. Harris
Toni L. Harris, Assistant Attorney General
Transportation Division
Van Wagoner Building
425 W. Ottawa, 4th Floor
Lansing, MI 48913
Tel: 517-373-1470

Date: April 28, 2016

PROOF OF SERVICE

I, Susan Lubitz, legal secretary to Assistant Attorney General Toni L. Harris, certify that on April 28, 2016, I served a true and correct copy of Petitioner's Brief in Reply to Respondent's Response to the State's Motion for Partial Summary Judgment on Claims for Governmental Insignia and False Suggestion of a Connection, in electronic format, on Respondent's counsel of record by U.S. mail with first-class postage fully prepaid thereon and causing same to be deposited in the United States mail service.

/s/ Susan Lubitz _____

Susan Lubitz

PETITIONER STATE OF MICHIGAN'S BRIEF IN
REPLY TO RESPONDENT'S RESPONSE TO THE
STATE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CLAIMS FOR GOVERNMENTAL
INSIGNIA AND FALSE
SUGGESTION OF A CONNECTION [4-28-16]

EXHIBIT 45

STATE OF MICHIGAN



DEPARTMENT OF ATTORNEY GENERAL

425 W. OTTAWA
LANSING, MICHIGAN 48913

BILL SCHUETTE
ATTORNEY GENERAL

April 7, 2016

Mr. John Di Giacomo
Revision/Legal
148 E. Front St., 3rd Floor
Traverse City, MI 49684

Re: M22 Trademark Cancellation Proceeding

Dear Mr. Di Giacomo:

Enclosed are the State of Michigan's objections and draft, unsigned responses to Respondent's Second Set of Interrogatories and Requests for Production of Documents. Pursuant to my April 6, 2016 email requesting your concurrence in a 10-day extension, because the person who will likely sign the responses is out of the office this week and our schedules do not allow us to review the materials next week, the enclosed draft responses will be finalized and signed during the week of April 18th.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to be "TH", with a long horizontal flourish extending to the right.

Toni L. Harris
Assistant Attorney General
Transportation Division
(517) 373-1470

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

State of Michigan

Petitioner,

Proceeding No: 92058315

v.

M22, LLC,

Registrations: 3992159

Respondent.

3348635

**PETITIONER'S OBJECTIONS AND DRAFT RESPONSES TO
RESPONDENT'S SECOND SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Petitioner, State of Michigan, by and through its attorneys, hereby submit the following responses and objections to Respondent M22, LLC's Second Set of Interrogatories and Requests for Production of Documents:

PRELIMINARY STATEMENT

The State of Michigan's investigation into the facts pertaining to this case is ongoing, and the State will supplement responses as required under the applicable rules. Where the State responds that responsive documents will be produced shall not be an admission that responsive documents exist or that the documents produced are relevant or admissible.

GENERAL OBJECTIONS

The State of Michigan objects to the instructions as set forth in Respondent's Second Set of Interrogatories and Requests for Production of Documents, and each request, to the extent they purport to place obligations or require conduct by the State of Michigan contrary to, or in excess of, that required by the Federal Rules of Civil Procedure or the Trademark Rules of Practice, 37 C.F.R. §§ 1 *et seq.*

RESPONSES TO INTERROGATORIES

Interrogatory No. 16: State the factual basis for Your belief that the Manual of Uniform Traffic Control Devices, as supplemented by the State of Michigan, is legally effective as stated in the Board's Order denying the parties' cross-motions for summary judgment on March 9, 2016.

Response: The State of Michigan objects to Interrogatory No. 16 on grounds that it seeks a legal conclusion and seeks to invade the attorney-client privilege and work product doctrine. Subject to and without waiving its objections, see the State's Combined Motion and Brief for Summary Disposition filed on August 27, 2015 and Brief in Opposition and Brief in Reply filed on October 22, 2015. In further answer, see MCL §§ 257.1 *et seq.* In addition, every trunkline highway in the State is a federally funded and, as such, the Code of Federal Regulations applies.

Interrogatory No. 17: State the factual basis for Your belief that the Manual of Uniform Traffic Control Devices, as supplemented by the State of Michigan, applies to Registrant.

Response: The State of Michigan objects to Interrogatory No. 17 on grounds that it seeks a legal conclusion and seeks to invade the attorney-client privilege and work product doctrine. Subject to and without waiving its objections, see the State's Combined Motion and Brief for Summary Disposition filed on August 27, 2015 and Brief in Opposition and Brief in Reply filed on October 22, 2015. In further answer, see MCL §§ 257.1 *et seq.* In addition, every trunkline highway in the State is a federally funded and, as such, the Code of Federal Regulations applies.

Interrogatory No. 18: State the factual basis for Your belief that Registrant's registration of the M22 Marks can be considered unlawful.

Response: The State of Michigan objects to Interrogatory No. 18 on grounds that it seeks a legal conclusion and seeks to invade the attorney-client privilege and work product doctrine. Subject to and without waiving its objections, see the State's Combined Motion and Brief for Summary Disposition filed on August 27, 2015 and Brief in Opposition and Brief in Reply filed on October 22, 2015. In further answer, see MCL §§ 257.1 *et seq.* In addition, every trunkline highway in

the State is a federally funded and, as such, the Code of Federal Regulations applies.

Interrogatory No. 19: State the factual basis for Your belief that Registrant's use of the M22 Marks can be considered unlawful.

Response: The State of Michigan objects to Interrogatory No. 19 on grounds that it seeks a legal conclusion and seeks to invade the attorney-client privilege and work product doctrine. Subject to and without waiving its objections, see the State's Combined Motion and Brief for Summary Disposition filed on August 27, 2015 and Brief in Opposition and Brief in Reply filed on October 22, 2015. In further answer, see MCL §§ 257.1 *et seq.* In addition, every trunkline highway in the State is a federally funded and, as such, the Code of Federal Regulations applies.

**RESPONSES TO REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Request for Production No. 16: Produce all Documents and other Communications referred to or related to Your responses to Registrant's Second Interrogatories.

Response: The State of Michigan objects to Request for Production No. 16 on grounds that it is overbroad, unduly burdensome, duplicative, seeks documents that

are publicly available or already in Respondent's possession, seeks information that is irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence, and seeks to invade the attorney-client privilege and work product doctrine. Subject to and without waiving its objections, non-objectionable and responsive documents, to the extent they exist, will be produced.

Respectfully submitted,

As to objections:

By: *Bill*

Date: April 7, 2016

BILL SCHUETTE, Attorney General
Toni L. Harris (P63111)
Assistant Attorney General/Transportation Division
Van Wagoner Building
425 W. Ottawa, 4th Floor
Lansing, MI 48913
Tel: 517-373-1470
Fax: 517-335-6586

As to responses to Interrogatories:

State of Michigan)
 SS.
County of Ingham)

The undersigned hereby affirms that the foregoing responses to Respondent's Second Set of Interrogatories are true and complete to the best of his knowledge, information and belief.

Brad Wieferich, P.E.
MDOT Design Division

Subscribed and sworn to before me on this
____ day of April, 2016.

Notary Public
Ingham County, Michigan
My commission expires: _____

PROOF OF SERVICE

I, Toni L. Harris, Assistant Attorney General Toni L. Harris, certify that on April 7, 2016, I served a true and correct copy of Petitioner's Responses to Respondent's Second Set of Interrogatories and Requests for Production of Documents on Respondent's counsel of record via electronic mail pursuant to agreement by the parties.

Toni L. Harris

**PETITIONER STATE OF MICHIGAN'S BRIEF IN
REPLY TO RESPONDENT'S RESPONSE TO THE
STATE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CLAIMS FOR GOVERNMENTAL
INSIGNIA AND FALSE
SUGGESTION OF A CONNECTION [4-28-16]**

EXHIBIT 46

Harris, Toni (AG)

From: Harris, Toni (AG)
Sent: Thursday, March 10, 2016 9:53 AM
To: John Di Giacomo
Cc: Eric Misterovich
Subject: RE: Deposition of the State of Michigan in State of Michigan v. M22, LLC

Mr. Di Giacomo,

I cannot provide dates of availability because I cannot identify the witnesses who will testify or the time needed to prepare for the deposition without the notice of 30(b)(6) deposition outlining the topics. We can confer on acceptable dates after I receive the notice.

Toni

-----Original Message-----

From: John Di Giacomo [mailto:john@revisionlegal.com]
Sent: Thursday, March 10, 2016 9:42 AM
To: Harris, Toni (AG) <HarrisT19@michigan.gov>
Cc: Eric Misterovich <eric@revisionlegal.com>
Subject: Re: Deposition of the State of Michigan in State of Michigan v. M22, LLC

Ms. Harris:

If you recall, you complained that we did not ask you for dates prior to serving our last notice of deposition. We have attempted to seek concurrence on acceptable dates. Since you have not provided us with any, we will simply re-notice the deposition for a date of our choosing.

Sincerely,

John Di Giacomo

--

John Di Giacomo
Revision Legal
john@revisionlegal.com
Phone: (231) 714.0100
Fax: (231) 714.0200
<http://www.revisionlegal.com>
Twitter: @jdigiacomo

> On Mar 10, 2016, at 9:40 AM, Harris, Toni (AG) <HarrisT19@michigan.gov> wrote:
>
> Mr. Di Giacomo,
>

> Pursuant to the Board's July 30, 2015 Order, Respondent is required to serve a revised notice of deposition addressing deficiencies and sustained objections to the original 30(b)(6) notice. I have not received a revised deposition notice. We can confer after the revised notice is served and I have reasonable time to review it with my client.

>

>

> Toni L. Harris

> Assistant Attorney General

> Michigan Department of Attorney General Transportation Division Van

> Wagoner Building, 4th Floor

> 425 W. Ottawa

> Lansing, MI 48913

> 517.335.2201 (phone)

> 517.335.6586 (fax)

>

>

>

> -----Original Message-----

> From: John Di Giacomo [mailto:john@revisionlegal.com]

> Sent: Wednesday, March 09, 2016 4:43 PM

> To: Harris, Toni (AG) <HarrisT19@michigan.gov>

> Cc: Eric Misterovich <eric@revisionlegal.com>

> Subject: Deposition of the State of Michigan in State of Michigan v.

> M22, LLC

>

> Ms. Harris:

>

> Please provide us with some dates on which a designee of the State of Michigan will be available to be deposed this month.

>

> Sincerely,

>

> John Di Giacomo

> --

>

> John Di Giacomo

> Revision Legal

> john@revisionlegal.com

> Phone: (231) 714.0100

> Fax: (231) 714.0200

> http://www.revisionlegal.com

> Twitter: @jdigiacomo

>

**PETITIONER STATE OF MICHIGAN'S BRIEF IN
REPLY TO RESPONDENT'S RESPONSE TO THE
STATE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CLAIMS FOR GOVERNMENTAL
INSIGNIA AND FALSE
SUGGESTION OF A CONNECTION [4-28-16]**

EXHIBIT 47

Harris, Toni (AG)

From: John Di Giacomo <john@revisionlegal.com>
Sent: Thursday, March 10, 2016 1:11 PM
To: Harris, Toni (AG)
Cc: Nikki Sunlin; Eric Misterovich
Subject: Notice of Deposition of the State of Michigan/2nd Request for Production and Interrogatories
Attachments: 03-10-16 ltr to State of Michigan.pdf; 03-10-16 Notice of Deposition State of Michigan.pdf; 03-10-16 Registrant's Second Roggs and RFP.pdf; ATT00001.txt

Ms. Harris:

Please see the attached correspondence.

Sincerely,



R E V I S I O N / L E G A L

109 E. Front St., STE 309, Traverse City, MI 49684
855.473.8474 / revisionlegal.com

Toni L. Harris
Assistant Attorney General
Transportation Division
425 W. Ottawa
Lansing, Michigan 48913
HarrisT19@michigan.gov

Date: March 10, 2016

Subject: Notice of Deposition of State of Michigan and Registrant's Second
Requests for Production and Interrogatories

Ms. Harris:

Please see enclosed the Notice of Deposition of the State of Michigan and
Registrant's Second Requests for Production of Documents and Interrogatories.
Do not hesitate to contact me should you have any questions.

Sincerely,

John Di Giacomo

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

State of Michigan

Petitioner,

Proceeding No: 92058315

v.

M22, LLC,

Registrant.

NOTICE OF DISCOVERY DEPOSITION OF THE STATE OF MICHIGAN

PLEASE TAKE NOTICE that on April 10, 2016, commencing at 9:00am, and from day to day afterwards until completed, at the East Lansing Marriott at University Place, 300 M.A.C. Ave, East Lansing, MI 48823. Registrant will take the discovery deposition of Petitioner State of Michigan. This discovery deposition will be before a notary public authorized to administer oaths, will be taken in accordance with the Federal Rules of Civil Procedure, and may be used for all purposes.

Pursuant to TBMP § 404, Trademark Rule of Practice § 2.120, and Fed. R. Civ. P. 30(b)(6), you must designate one or more officers, directors, or managing agents to testify on your behalf. The matters on which the witness(es) will be examined are as follows:

- (1) The State of Michigan's use of the M-22 sign, as specified in ¶ 5 of its Second Amended Petition to Cancel, supporting its allegation that "the sign has come to represent and describe the culture of Northern Michigan;"

- (2) The factual basis for Petitioner's allegation that "[t]ravelers have for many years associated the M-22 sign with Petitioner, its traffic and road services, and the road and the area immediately surrounding the M-22 highway" as stated in ¶ 4 of its Second Amended Petition to Cancel;
- (3) The factual basis for Petitioner's allegation, as specified in ¶ 5 of its Second Amended Petition to Cancel, that "[t]hese associations come from Petitioner's use of the M-22 sign and maintenance of the highway for travelers for nearly a century;"
- (4) The factual basis for Petitioner's allegation that Petitioner's "use of the M-22 Sign... has become a symbol of that region of Petitioner serviced by the M-22 highway" as stated in ¶ 7 of Petitioner's Second Amended Petition to Cancel;
- (5) The "services provided by Petitioner through the M-22 Sign" as stated in ¶ 11 of Petitioner's Second Amended Petition to Cancel;
- (6) The factual basis for Petitioner's allegation that Registrant's "registration is a source of damage and injury to Petitioner" as stated in ¶ 12 of Petitioner's Second Amended Petition to Cancel;
- (7) The factual basis for Petitioner's allegation that "[t]he MUTCD under the Highway Safety Act of 1996 regulates the use of traffic control device designs like Petitioner's M-22 Sign" as stated in ¶ 17 of Petitioner's Second Amended Petition to Cancel;
- (8) The factual basis for Petitioner's belief that the M-22 sign is contained within the federal Manual on Uniform Traffic Control Devices;

- (9) The factual basis for Petitioner's allegation that MCL 257.1 et seq "requires the Michigan Department of Transportation... and the Michigan State Police... to adopt and maintain a uniform system of traffic control devices... that confirms with the federal MUTCD" as stated in ¶ 19 of Petitioner's Second Amended Petition to Cancel;
- (10) The factual basis for Petitioner's allegation that "[t]he M-22 Sign is a traffic control device regulated by the MUTCD under the Highway Safety Act of 1966" as stated in ¶ 21 of Petitioner's Second Amended Petition to Cancel.
- (11) The factual basis for Petitioner's allegation that, "[u]nder the MUTCD, the M-22 Sign shall not be protected as a trademark" as stated in ¶ 22 of Petitioner's Second Amended Petition to Cancel;
- (12) The factual basis for Petitioner's allegation that "[g]ranting exclusive rights to use the M-22 Sign... violates the provisions of the federal Highway Safety Act of 1966 regulations under the MUTCD" as stated in ¶ 24 of Petitioner's Second Amended Petition to Cancel;
- (13) The factual basis for Petitioner's allegation that "Registrant's use and registration of the M-22 Sign as a trademark is unlawful and violates the provisions of the federal Highway Safety Act of 1966 and regulations under the MUTCD" as stated in ¶ 25 of Petitioner's Second Amended Petition to Cancel;
- (14) The factual basis for Petitioner's allegation that "[t]he mark in use by Registrant is not the mark in the M22 Online Registration" as stated in ¶ 29 of Petitioner's Second Amended Petition to Cancel;

- (15) The factual basis for Petitioner's allegation that "Registrant stopped use of the mark in the M22 Online Registration in association with the goods identified in the M22 Online Registration with no intent to resume such use" as stated in ¶ 29 of Petitioner's Second Amended Petition to Cancel;
- (16) The factual basis for Petitioner's allegation that "Registrant has promoted the M-22 Sign as a symbol of Petitioner's Northwestern region" as stated in ¶ 33 of Petitioner's Second Amended Petition to Cancel;
- (17) The factual basis for Petitioner's allegation that "Registrant has sold thousands of stickers of [sic] consisting solely of the M-22 Sign, allowing purchasers to display the alleged mark on and in connection with vehicles and other property, without restriction, in any manner" as stated in ¶ 34 of Petitioner's Second Amended Petition to Cancel;
- (18) The factual basis for Petitioner's allegation that "the sign's placement on goods as ornamentation has caused the M-22 Sign to lose any significance it may have had as a mark and source identifier such that individuals who see the alleged mark see the M-22 Sign merely as a geographic indicator, a type of ornamentation, or a method of identifying with the Northwestern part of the State of Michigan" as stated in ¶ 35 of Petitioner's Second Amended Petition to Cancel;
- (19) The factual basis for Petitioner's allegation that "[t]he M-22 Sign is associated with a particular region within Petitioner's borders and the amenities that the region and Petitioner offers" as stated in ¶ 40 of Petitioner's Second Amended Petition to Cancel;

- (20) The factual basis for Petitioner's allegation that "[t]he M-22 Sign points uniquely and unmistakably to the State of Michigan" as stated in ¶ 40 of Petitioner's Second Amended Petition to Cancel;
- (21) The factual basis for Petitioner's allegation that the M-22 Sign " falsely suggests a connection with the State of Michigan" as stated in ¶ 41 of Petitioner's Second Amended Petition to Cancel;
- (22) The factual basis for Petitioner's allegation that "[t]he fame or reputation of Petitioner is such that, when the M-22 Sign is used with Registrant's goods or services, a connection with Petitioner is presumed" as stated in ¶ 43 of Petitioner's Second Amended Petition to Cancel;
- (23) The factual basis for Petitioner's allegation that "Registrant adopted and used Petitioner's M-22 Sign as its own for the very reason that the M-22 Sign points unmistakably to Petitioner" as stated in ¶ 46 of Petitioner's Second Amended Petition to Cancel;
- (24) The factual basis for Petitioner's allegation that "Registrant adopted and used the M-22 Sign as its own, because the M-22 Sign is clearly associated with Petitioner" as stated in ¶ 47 of Petitioner's Second Amended Petition to Cancel;
- (25) The factual basis for Petitioner's allegation that "Registrant adopted and used Petitioner's M-22 Sign as its own, because of the goodwill associated with Petitioner's M-22 Sign" as stated in ¶ 48 of Petitioner's Second Amended Petition to Cancel'

- (26) The factual basis for Petitioner's allegation that "Registrant has itself indicated that the reason it adopted the M-22 Sign was because it refers to Petitioner and its Northwestern region" as stated in ¶ 50 of Petitioner's Second Amended Petition to Cancel;
- (27) The factual basis for Petitioner's allegation that "Registrant's use of Petitioner's M-22 Sign was deliberately designed to trade on consumers' association of the M-22 Sign with Petitioner and with the goodwill created by Petitioner in the M-22 Sign" as stated in ¶ 53 of Petitioner's Second Amended Petition to Cancel;
- (28) The factual basis for Petitioner's allegation that "Registrant blatantly misused the M-22 Sign in a manner that was calculated and designed to trade on the goodwill created by Petitioner in the M-22 Sign" as stated in ¶ 54 of Petitioner's Second Amended Petition to Cancel;
- (29) The factual basis for Petitioner's allegation that "consumers purchase goods decorated with the M-22 Sign, because the M-22 Sign points to Petitioner as the source" as stated in ¶ 55 of Petitioner's Second Amended Petition to Cancel;
- (30) The factual basis for Petitioner's allegation that "[t]he M-22 Sign in the M-22 Registration and in the M-22 Online Registration is being blatantly misused by Registrant to misrepresent the source of the goods or services on or in connection with which the mark is used, as prohibited under Trademark Act section 14" as stated in ¶ 56 of Petitioner's Second Amended Petition to Cancel;

- (31) The factual basis for Petitioner's allegation that "[t]he M-22 Sign is an insignia of the State of Michigan" as stated in ¶ 59 of Petitioner's Second Amended Petition to Cancel;
- (32) The factual basis for Petitioner's allegation that "Registrant knew of Petitioner's prior rights in the M-22 Sign, knew of Petitioner's prior and extensive use of the M-22 Sign, and knew the extent to which the M-22 Sign pointed to the State of Michigan" as stated in ¶ 62 of Petitioner's Second Amended Petition to Cancel;
- (33) The factual basis for Petitioner's allegation that "Registrant knew, or had at least no reasonable basis for believing otherwise, that its use of the M-22 Sign would create a likelihood of confusion as to the source of the associated goods and services" as stated in ¶ 62 of Petitioner's Second Amended Petition to Cancel;
- (34) The factual basis for Petitioner's allegation that "Registrant was not using the mark M22 M22ONLINE.COM on all the goods identified in application Serial No. 78963038 when it filed the application, and... is not currently using the mark on all the goods identified in the application" as stated in ¶ 66 of Petitioner's Second Amended Petition to Cancel;
- (35) The factual basis for Petitioner's allegation that "Petitioner has used the M-22 Sign continuously in interstate commerce for nearly a century, in association with providing traffic management services, providing road and traffic information, and facilitating the safe and efficient travel of travelers within its borders" as stated in ¶ 70 of Petitioner's Second Amended Petition to Cancel;

- (36) The factual basis for Petitioner's allegation that, "[t]hrough Petitioner's use of the M-22 Sign, the public has come to recognize the sign as signifying Petitioner, its services, and specific geographic areas within Michigan" as stated in ¶ 72 of Petitioner's Second Amended Petition to Cancel;
- (37) The factual basis for Petitioner's allegation that, "[t]hrough Petitioner's use of the M-22 Sign, Petitioner has built up extensive and valuable goodwill in the M-22 Sign" as stated in ¶ 73 of Petitioner's Second Amended Petition to Cancel;
- (38) The factual basis for Petitioner's allegation that "Registrant's use and registration of the M-22 Sign is likely to cause confusion, deception, and mistake as to the origin of Registrant's products and to confuse, mislead and deceive members of the public into believing that Registrant's goods originate from, or are sponsored, approved or licensed by Petitioner, or are in some way connected to Petitioner" as stated in ¶ 75 of Petitioner's Second Amended Petition to Cancel;
- (39) The factual basis for Petitioner's allegation that "[t]he primary significance of the M-22 Sign is the generally known region of Northern Michigan, the location of Petitioner's M-22 highway" as stated in ¶ 83 of Petitioner's Second Amended Petition to Cancel;
- (40) The factual basis for Petitioner's belief that, when used on or in connection with Registrant's retail store services, the M-22 sign is primarily merely geographically descriptive of them;

- (41) The factual basis for Petitioner's allegation that "[t]he M-22 Sign has not acquired secondary meaning" as stated in ¶ 83 of Petitioner's Second Amended Petition to Cancel;
- (42) The factual basis for Petitioner's belief that the Manual on Uniform Traffic Control Devices, as supplemented and adopted by Petitioner, applies to Registrant;
- (43) The factual basis for Petitioner's belief that the Manual on Uniform Traffic Control Devices, as supplemented and adopted by Petitioner, is legally effective as against Registrant, as referenced in the Board's Order denying the parties' cross-motions for summary judgment on March 9, 2016;
- (44) The factual basis for Petitioner's belief for that Registrant's use of the M22 Marks can be considered unlawful;
- (45) All correspondence received by the State of Michigan concerning its failure to comply with or adhere to the Manual on Uniform Traffic Control Devices or regulations of the Federal Highway Administration or Department of Transportation of the United States of America;
- (46) The State of Michigan's recognition of M22, LLC as one Michigan's "50 Companies to Watch;"
- (47) The State of Michigan's recognition of M22, LLC, and its use of M22, LLC as a representative of reasons to do business in Michigan, in its Pure Michigan advertising campaign;
- (48) The State of Michigan's use of M22, LLC in the Pure Michigan "Official State Travel Guide;"

- (49) The State of Michigan's adoption and enforcement of the Michigan Manual on Uniform Traffic Control Devices against third parties;

Respectfully Submitted,



Digitally signed by John Di
Giacomo
DN: cn=John Di Giacomo,
o=Revision Legal, PLLC, ou,
email=john@revisionlegal.c
om, c=US
Date: 2016.03.10 13:03:19
-05'00'

Date: March 10, 2016

John Di Giacomo
Revision Legal, PLLC
Attorney for Registrant
109 E. Front St.
Suite 309
Traverse City, Michigan 49684
231.714.0100
231.714.0200 (f)
john@revisionlegal.com

CERTIFICATE OF SERVICE

I, John Di Giacomo, an attorney, hereby certify that I served a true and correct copy of this Notice of Discovery Deposition of the State of Michigan on counsel of record on March 10, 2016 via electronic mail.



Digitally signed by John Di
Giacomo
DN: cn=John Di Giacomo,
o=Revision Legal, PLLC, ou,
email=john@revisionlegal.c
om, c=US
Date: 2016.03.10 13:03:39
-05'00'

Date: March 10, 2016

John Di Giacomo
Revision Legal, PLLC
Attorney for Registrant
109 E. Front St.
Suite 309
Traverse City, Michigan 49684
231.714.0100

231.714.0200 (f)
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PETITIONER STATE OF MICHIGAN'S BRIEF IN
REPLY TO RESPONDENT'S RESPONSE TO THE
STATE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CLAIMS FOR GOVERNMENTAL
INSIGNIA AND FALSE
SUGGESTION OF A CONNECTION [4-28-16]

EXHIBIT 48

Harris, Toni (AG)

From: Harris, Toni (AG)
Sent: Monday, March 28, 2016 9:43 AM
To: John Di Giacomo
Cc: Nikki Sunlin; Eric Misterovich; Lubitz, Susan (AG)
Subject: RE: Notice of Deposition of the State of Michigan/2nd Request for Production and Interrogatories

Mr. Di Giacomo,

First, although you demand in your email that the deposition will proceed on the 9th, the Notice states the 10th. Regarding the unilaterally set deposition date, as I explained to you in previous emails, I will identify witnesses and determine their availability to testify so that we can agree on a date for deposition, in accordance with the Board's Order quashing the previous deposition notice and ordering cooperation by the parties in scheduling depositions. I expected you understood this when you unilaterally scheduled the deposition for a Sunday despite our prior correspondence.

Obviously, the date as noticed will not work because April 10th is a Sunday and employees are not in the office. In addition, these first two weeks of April are challenging because one or more employees who may testify or assist in preparation are away on spring break. I am unavailable on April 10th, and I will be out of the office several days during preceding week. There is no need to schedule the deposition on a weekend when employees are out of the office. Even without a suspension, there are more than two months left for discovery. If, for some reason, the case is not suspended, we can discuss dates on a weekday toward the latter part of April. I would like to get dates of availability during this same time period for the depositions of Matt and Keegan Myers. However, because the motion could resolve the entire case, I fully expect that the case will be suspended pending a decision.

As for the suspension, the case you cited has no relevance to the facts here. Further, there is no basis for filing a Rule 11 motion. If you would like to discuss these matters further to avoid unnecessary and improper filings, please let me know.

Toni

From: John Di Giacomo [mailto:john@revisionlegal.com]
Sent: Saturday, March 26, 2016 10:23 AM
To: Harris, Toni (AG) <HarrisT19@michigan.gov>
Cc: Nikki Sunlin <nikki@revisionlegal.com>; Eric Misterovich <eric@revisionlegal.com>; Lubitz, Susan (AG) <Lubitzs@michigan.gov>
Subject: Re: Notice of Deposition of the State of Michigan/2nd Request for Production and Interrogatories

Ms. Harris:

The filing of a motion for summary judgment does not automatically suspend a proceeding. Specifically, this issue was addressed at length in *Super Bakery, Inc. See Super Bakery, Inc.*, 96 U.S.P.Q 2d 1134 (TTAB Sept. 16, 2010). In that case, the Board examined whether the filing of a motion for summary disposition absolved the

moving party from its duty to respond to discovery requests and found that, until such a suspension is issued, discovery should have proceeded.

In this case, the Board has instructed the parties on several occasions to undertake discovery. Further, the Petitioner filed the instant motion for summary without conducting any additional discovery, meaning, no new discovered facts justified the delayed filing—a filing that could have been made six months ago and at the time of the filing of Petitioner's last motion for summary. Consequently, Registrant will be filing a motion with the Board seeking sanctions under Rule 11. You will receive a copy of that motion next week.

We expect that the deposition will proceed as planned on April 9. If the Petitioner is unwilling to provide its designee on that date, Registrant will file a motion for order to show cause as to why Petitioner should not be sanctioned with dismissal of this proceeding.

Sincerely,

John Di Giacomo

--

John Di Giacomo
Revision Legal
john@revisionlegal.com
Phone: (231) 714.0100
Fax: (231) 714.0200
<http://www.revisionlegal.com>
Twitter: @jdigiacomo

On Mar 25, 2016, at 2:30 PM, Harris, Toni (AG) <HarrisT19@michigan.gov> wrote:

Mr. Di Giacomo,

Regarding Respondent's Notice of 30(b)(6) Deposition, given the State's pending Motion for Partial Summary Judgment, the deposition currently noticed for Sunday, April 9th will need to be rescheduled to a later date. Obviously, the State reserves all rights to object or otherwise respond to the Notice.

If you would like to discuss this matter further, feel free to contact me.

Regards,

Toni

Toni L. Harris
Assistant Attorney General
Michigan Department of Attorney General
Transportation Division
Van Wagoner Building, 4th Floor
425 W. Ottawa
Lansing, MI 48913
517.335.2201 (phone)
517.335.6586 (fax)

-----Original Message-----

From: John Di Giacomo [<mailto:john@revisionlegal.com>]

Sent: Thursday, March 10, 2016 1:11 PM

To: Harris, Toni (AG) <HarrisT19@michigan.gov>

Cc: Nikki Sunlin <nikki@revisionlegal.com>; Eric Misterovich <eric@revisionlegal.com>

Subject: Notice of Deposition of the State of Michigan/2nd Request for Production and Interrogatories

Ms. Harris:

Please see the attached correspondence.

Sincerely,

**PETITIONER STATE OF MICHIGAN'S BRIEF IN
REPLY TO RESPONDENT'S RESPONSE TO THE
STATE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CLAIMS FOR GOVERNMENTAL
INSIGNIA AND FALSE
SUGGESTION OF A CONNECTION [4-28-16]**

EXHIBIT 49

Harris, Toni (AG)

From: Harris, Toni (AG)
Sent: Wednesday, April 06, 2016 11:21 AM
To: John Di Giacomo
Cc: Nikki Sunlin; Eric Misterovich; Lubitz, Susan (AG)
Subject: Re: Notice of Deposition of the State of Michigan/2nd Request for Production and Interrogatories

Mr. Di Giacomo,

I cannot identify a designee without a deposition notice. I explained that we would set a mutually convenient date after I received the notice and spoke with my client. You could have sent the notice with a date to be mutually agreed upon by the parties. Instead, you unilaterally set the date, in violation of the Board's Order, and on a weekend no less. You understood from the start that we would need to reach agreement on the deposition date.

The case you cited has no relevance to the facts here. Michigan is not unnecessarily delaying this matter. We have offered to schedule depositions in the latter part of April. Your client is not harmed by taking a deposition at that point, as discovery is open for another 5-6 weeks based on the current scheduling order. I generally referred to the latter part of April so that we could work together on deposition dates for my client and yours based on our schedules. If you prefer that I simply dictate to you dates for my client and yours, I am happy to do that. I will look at my calendar, talk with my client, and provide dates in late April. I am out of town nearly every day next week.

Your continuing Rule 11 threats have no basis in fact or law. You might consider that filing a frivolous Rule 11 motion is, in fact, a violation of Rule 11. Your threats do not advance the ball except to unnecessarily increase costs and fees for your client.

I will get back to you on dates by the end of the week.

Toni

On Apr 6, 2016, at 10:52 AM, John Di Giacomo <john@revisionlegal.com> wrote:

Ms. Harris:

On March 9, 2015, I requested that you provide dates for the deposition of the State of Michigan's designee. On March 10, 2015, you declined to provide dates and, instead, requested that we provide you with a deposition notice. We provided that deposition notice on March 10. Between March 10 and March 24, we did not hear from your office—you did not lay an objection, nor did you suggest alternative dates. On March 25, you stated that the deposition "will need to be rescheduled to a later date."

On March 26, we explained to you why the deposition must continue consistent with Board precedent. On March 28, you laid your first objection to the designated date and time for the deposition. You also stated, "If, for some reason, the case is not suspended, we can discuss dates on a weekday toward the latter part of April." You not only failed to provide alternative dates,

but you waited to lodge objections until 29 days after you received notice that Registrants desired to hold a deposition.

The State's is clearly attempting to unnecessarily delay this matter and needlessly increase the costs of litigation. These actions constitute violations of Rule 11 for which our client will be forced to seek sanctions if the Petitioner does not provide a date certain on which the deposition will be taken next week.

Do not hesitate to contact me should you have any questions.

Sincerely,

John Di Giacomo

--

John Di Giacomo
Revision Legal
john@revisionlegal.com
Phone: (231) 714.0100
Fax: (231) 714.0200
<http://www.revisionlegal.com>
Twitter: @jdigiacomo

On Apr 6, 2016, at 10:39 AM, Harris, Toni (AG) <HarrisT19@michigan.gov> wrote:

Mr. Di Giacomo,

A designee will not be available on April 9th per my March 28th email. There is no need for a motion, as I have offered to discuss dates in late April for the Michigan designee and Matt and Keegan Myers. I did not receive your response to my 3/28 email. Please advise.

Toni

On Apr 5, 2016, at 9:25 PM, John Di Giacomo <john@revisionlegal.com> wrote:

Ms. Harris:

Please indicate whether the State of Michigan will make a designee available for April 9. If the State does not intend to make a designee available, we will need to cancel our reservation and file a motion with the Board.

Sincerely,

John Di Giacomo

--

John Di Giacomo
Revision Legal
john@revisionlegal.com
Phone: (231) 714.0100
Fax: (231) 714.0200
<http://www.revisionlegal.com>
Twitter: @jdigiacomo

On Mar 28, 2016, at 9:43 AM, Harris, Toni (AG)
<HarrisT19@michigan.gov> wrote:

Mr. Di Giacomo,

First, although you demand in your email that the deposition will proceed on the 9th, the Notice states the 10th. Regarding the unilaterally set deposition date, as I explained to you in previous emails, I will identify witnesses and determine their availability to testify so that we can agree on a date for deposition, in accordance with the Board's Order quashing the previous deposition notice and ordering cooperation by the parties in scheduling depositions. I expected you understood this when you unilaterally scheduled the deposition for a Sunday despite our prior correspondence.

Obviously, the date as noticed will not work because April 10th is a Sunday and employees are not in the office. In addition, these first two weeks of April are challenging because one or more employees who may testify or assist in preparation are away on spring break. I am unavailable on April 10th, and I will be out of the office several days during preceding week. There is no need to schedule the deposition on a weekend when employees are out of the office. Even without a suspension, there are more than two months left for discovery. If, for some reason, the case is not suspended, we can discuss dates on a weekday toward the latter part of April. I would like to get dates of availability during this same time period for the depositions of Matt and Keegan Myers. However, because the motion could resolve the entire case, I fully expect that the case will be suspended pending a decision.

As for the suspension, the case you cited has no relevance to the facts here. Further, there is no basis for filing a Rule 11 motion. If you would like to discuss these matters further to avoid unnecessary and improper filings, please let me know.

Toni

From: John Di Giacomo
[mailto:john@revisionlegal.com]
Sent: Saturday, March 26, 2016 10:23 AM
To: Harris, Toni (AG) <HarrisT19@michigan.gov>
Cc: Nikki Sunlin <nikki@revisionlegal.com>; Eric Misterovich <eric@revisionlegal.com>; Lubitz, Susan (AG) <Lubitzs@michigan.gov>
Subject: Re: Notice of Deposition of the State of Michigan/2nd Request for Production and Interrogatories

Ms. Harris:

The filing of a motion for summary judgment does not automatically suspend a proceeding. Specifically, this issue was addressed at length in *Super Bakery, Inc. See Super Bakery, Inc.*, 96 U.S.P.Q.2d 1134 (TTAB Sept. 16, 2010). In that case, the Board examined whether the filing of a motion for summary disposition absolved the moving party from its duty to respond to discovery requests and found that, until such a suspension is issued, discovery should have proceeded.

In this case, the Board has instructed the parties on several occasions to undertake discovery. Further, the Petitioner filed the instant motion for summary without conducting any additional discovery, meaning, no new discovered facts justified the delayed filing—a filing that could have been made six months ago and at the time of the filing of Petitioner's last motion for summary. Consequently, Registrant will be filing a motion with the Board seeking sanctions under Rule 11. You will receive a copy of that motion next week.

We expect that the deposition will proceed as planned on April 9. If the Petitioner is unwilling to provide its designee on that date, Registrant will file a motion for order to show cause as to why

Petitioner should not be sanctioned with dismissal of this proceeding.

Sincerely,

John Di Giacomo

--

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Phone: (231) 714.0100
Fax: (231) 714.0200
<http://www.revisionlegal.com>
Twitter: @jdigiacomo

On Mar 25, 2016, at 2:30 PM,
Harris, Toni (AG)
<HarrisT19@michigan.gov> wrote:

Mr. Di Giacomo,

Regarding Respondent's Notice of 30(b)(6) Deposition, given the State's pending Motion for Partial Summary Judgment, the deposition currently noticed for Sunday, April 9th will need to be rescheduled to a later date. Obviously, the State reserves all rights to object or otherwise respond to the Notice.

If you would like to discuss this matter further, feel free to contact me.

Regards,

Toni

Toni L. Harris
Assistant Attorney General
Michigan Department of Attorney General
Transportation Division
Van Wagoner Building, 4th Floor
425 W. Ottawa
Lansing, MI 48913
517.335.2201 (phone)
517.335.6586 (fax)

-----Original Message-----

From: John Di Giacomo

[mailto:john@revisionlegal.com]

Sent: Thursday, March 10, 2016 1:11 PM

To: Harris, Toni (AG)

<HarrisT19@michigan.gov>

Cc: Nikki Sunlin

<nikki@revisionlegal.com>; Eric

Misterovich

<eric@revisionlegal.com>

Subject: Notice of Deposition of the
State of Michigan/2nd Request for
Production and Interrogatories

Ms. Harris:

Please see the attached
correspondence.

Sincerely,

PETITIONER STATE OF MICHIGAN'S BRIEF IN
REPLY TO RESPONDENT'S RESPONSE TO THE
STATE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CLAIMS FOR GOVERNMENTAL
INSIGNIA AND FALSE
SUGGESTION OF A CONNECTION [4-28-16]

EXHIBIT 50

Harris, Toni (AG)

From: Harris, Toni (AG)
Sent: Friday, April 08, 2016 11:25 AM
To: John Di Giacomo
Cc: Nikki Sunlin; Eric Misterovich; Lubitz, Susan (AG)
Subject: M22

Mr. Di Giacomo:

I have confirmed that the State of Michigan's designee will be available for deposition starting at 9:00 a.m. on Friday, April 29th at the Michigan Department of Transportation offices located at 425 W. Ottawa Street in Lansing, Michigan.

Please reserve May 11-13 for the depositions of Matt and Keegan Myers and, assuming one or both will be designees for your client, for the deposition of M22, LLC. I will send notices of deposition early next week. Shall I plan on scheduling these depositions at your office?

Thanks.

Toni

Toni L. Harris
Assistant Attorney General
Michigan Department of Attorney General
Transportation Division
Van Wagoner Building, 4th Floor
425 W. Ottawa
Lansing, MI 48913
517.335.2201 (phone)
517.335.6586 (fax)

**PETITIONER STATE OF MICHIGAN'S BRIEF IN
REPLY TO RESPONDENT'S RESPONSE TO THE
STATE'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON CLAIMS FOR GOVERNMENTAL
INSIGNIA AND FALSE
SUGGESTION OF A CONNECTION [4-28-16]**

EXHIBIT 51

Harris, Toni (AG)

From: John Di Giacomo <john@revisionlegal.com>
Sent: Thursday, April 14, 2016 4:41 PM
To: Harris, Toni (AG)
Cc: Nikki Sunlin; Eric Misterovich; Lubitz, Susan (AG)
Subject: Re: M22
Attachments: 04-14-16 Notice of Deposition State of Michigan for 04-29-16.pdf; ATT00001.htm

Ms. Harris:

Please see the attached Notice of Video Deposition for the State of Michigan.

Sincerely,

John Di Giacomo

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

State of Michigan

Petitioner,

Proceeding No: 92058315

v.

M22, LLC,

Registrant.

NOTICE OF DISCOVERY VIDEO DEPOSITION OF THE STATE OF MICHIGAN

PLEASE TAKE NOTICE that on Friday, April 29, 2016, commencing at 10:00am, and from day-to-day afterwards until completed, at the law firm of Alane & Chartier, PLC, 403 Seymour Avenue, Lansing, Michigan 48933, Registrant will take the discovery deposition of Petitioner State of Michigan. This discovery deposition will be recorded by audiovisual and stenographic means before a notary public authorized to administer oaths, will be taken in accordance with the Federal Rules of Civil Procedure, and may be used for all purposes.

Pursuant to TBMP § 404, Trademark Rule of Practice § 2.120, and Fed. R. Civ. P. 30(b)(6), you must designate one or more officers, directors, or managing agents to testify on your behalf. The matters on which the witness(es) will be examined are as follows:

- (1) The State of Michigan's use of the M-22 sign, as specified in ¶ 5 of its Second Amended Petition to Cancel, supporting its allegation that "the sign has come to represent and describe the culture of Northern Michigan;"

- (2) The factual basis for Petitioner's allegation that "[t]ravelers have for many years associated the M-22 sign with Petitioner, its traffic and road services, and the road and the area immediately surrounding the M-22 highway" as stated in ¶ 4 of its Second Amended Petition to Cancel;
- (3) The factual basis for Petitioner's allegation, as specified in ¶ 5 of its Second Amended Petition to Cancel, that "[t]hese associations come from Petitioner's use of the M-22 sign and maintenance of the highway for travelers for nearly a century;"
- (4) The factual basis for Petitioner's allegation that Petitioner's "use of the M-22 Sign... has become a symbol of that region of Petitioner serviced by the M-22 highway" as stated in ¶ 7 of Petitioner's Second Amended Petition to Cancel;
- (5) The "services provided by Petitioner through the M-22 Sign" as stated in ¶ 11 of Petitioner's Second Amended Petition to Cancel;
- (6) The factual basis for Petitioner's allegation that Registrant's "registration is a source of damage and injury to Petitioner" as stated in ¶ 12 of Petitioner's Second Amended Petition to Cancel;
- (7) The factual basis for Petitioner's allegation that "[t]he MUTCD under the Highway Safety Act of 1996 regulates the use of traffic control device designs like Petitioner's M-22 Sign" as stated in ¶ 17 of Petitioner's Second Amended Petition to Cancel;
- (8) The factual basis for Petitioner's belief that the M-22 sign is contained within the federal Manual on Uniform Traffic Control Devices;

- (9) The factual basis for Petitioner's allegation that MCL 257.1 et seq "requires the Michigan Department of Transportation... and the Michigan State Police... to adopt and maintain a uniform system of traffic control devices... that confirms with the federal MUTCD" as stated in ¶ 19 of Petitioner's Second Amended Petition to Cancel;
- (10) The factual basis for Petitioner's allegation that "[t]he M-22 Sign is a traffic control device regulated by the MUTCD under the Highway Safety Act of 1966" as stated in ¶ 21 of Petitioner's Second Amended Petition to Cancel.
- (11) The factual basis for Petitioner's allegation that, "[u]nder the MUTCD, the M-22 Sign shall not be protected as a trademark" as stated in ¶ 22 of Petitioner's Second Amended Petition to Cancel;
- (12) The factual basis for Petitioner's allegation that "[g]ranting exclusive rights to use the M-22 Sign... violates the provisions of the federal Highway Safety Act of 1966 regulations under the MUTCD" as stated in ¶ 24 of Petitioner's Second Amended Petition to Cancel;
- (13) The factual basis for Petitioner's allegation that "Registrant's use and registration of the M-22 Sign as a trademark is unlawful and violates the provisions of the federal Highway Safety Act of 1966 and regulations under the MUTCD" as stated in ¶ 25 of Petitioner's Second Amended Petition to Cancel;
- (14) The factual basis for Petitioner's allegation that "[t]he mark in use by Registrant is not the mark in the M22 Online Registration" as stated in ¶ 29 of Petitioner's Second Amended Petition to Cancel;

- (15) The factual basis for Petitioner's allegation that "Registrant stopped use of the mark in the M22 Online Registration in association with the goods identified in the M22 Online Registration with no intent to resume such use" as stated in ¶ 29 of Petitioner's Second Amended Petition to Cancel;
- (16) The factual basis for Petitioner's allegation that "Registrant has promoted the M-22 Sign as a symbol of Petitioner's Northwestern region" as stated in ¶ 33 of Petitioner's Second Amended Petition to Cancel;
- (17) The factual basis for Petitioner's allegation that "Registrant has sold thousands of stickers of [sic] consisting solely of the M-22 Sign, allowing purchasers to display the alleged mark on and in connection with vehicles and other property, without restriction, in any manner" as stated in ¶ 34 of Petitioner's Second Amended Petition to Cancel;
- (18) The factual basis for Petitioner's allegation that "the sign's placement on goods as ornamentation has caused the M-22 Sign to lose any significance it may have had as a mark and source identifier such that individuals who see the alleged mark see the M-22 Sign merely as a geographic indicator, a type of ornamentation, or a method of identifying with the Northwestern part of the State of Michigan" as stated in ¶ 35 of Petitioner's Second Amended Petition to Cancel;
- (19) The factual basis for Petitioner's allegation that "[t]he M-22 Sign is associated with a particular region within Petitioner's borders and the amenities that the region and Petitioner offers" as stated in ¶ 40 of Petitioner's Second Amended Petition to Cancel;

- (20) The factual basis for Petitioner's allegation that "[t]he M-22 Sign points uniquely and unmistakably to the State of Michigan" as stated in ¶ 40 of Petitioner's Second Amended Petition to Cancel;
- (21) The factual basis for Petitioner's allegation that the M-22 Sign " falsely suggests a connection with the State of Michigan" as stated in ¶ 41 of Petitioner's Second Amended Petition to Cancel;
- (22) The factual basis for Petitioner's allegation that "[t]he fame or reputation of Petitioner is such that, when the M-22 Sign is used with Registrant's goods or services, a connection with Petitioner is presumed" as stated in ¶ 43 of Petitioner's Second Amended Petition to Cancel;
- (23) The factual basis for Petitioner's allegation that "Registrant adopted and used Petitioner's M-22 Sign as its own for the very reason that the M-22 Sign points unmistakably to Petitioner" as stated in ¶ 46 of Petitioner's Second Amended Petition to Cancel;
- (24) The factual basis for Petitioner's allegation that "Registrant adopted and used the M-22 Sign as its own, because the M-22 Sign is clearly associated with Petitioner" as stated in ¶ 47 of Petitioner's Second Amended Petition to Cancel;
- (25) The factual basis for Petitioner's allegation that "Registrant adopted and used Petitioner's M-22 Sign as its own, because of the goodwill associated with Petitioner's M-22 Sign" as stated in ¶ 48 of Petitioner's Second Amended Petition to Cancel'

- (26) The factual basis for Petitioner's allegation that "Registrant has itself indicated that the reason it adopted the M-22 Sign was because it refers to Petitioner and its Northwestern region" as stated in ¶ 50 of Petitioner's Second Amended Petition to Cancel;
- (27) The factual basis for Petitioner's allegation that "Registrant's use of Petitioner's M-22 Sign was deliberately designed to trade on consumers' association of the M-22 Sign with Petitioner and with the goodwill created by Petitioner in the M-22 Sign" as stated in ¶ 53 of Petitioner's Second Amended Petition to Cancel;
- (28) The factual basis for Petitioner's allegation that "Registrant blatantly misused the M-22 Sign in a manner that was calculated and designed to trade on the goodwill created by Petitioner in the M-22 Sign" as stated in ¶ 54 of Petitioner's Second Amended Petition to Cancel;
- (29) The factual basis for Petitioner's allegation that "consumers purchase goods decorated with the M-22 Sign, because the M-22 Sign points to Petitioner as the source" as stated in ¶ 55 of Petitioner's Second Amended Petition to Cancel;
- (30) The factual basis for Petitioner's allegation that "[t]he M-22 Sign in the M-22 Registration and in the M-22 Online Registration is being blatantly misused by Registrant to misrepresent the source of the goods or services on or in connection with which the mark is used, as prohibited under Trademark Act section 14" as stated in ¶ 56 of Petitioner's Second Amended Petition to Cancel;

- (31) The factual basis for Petitioner's allegation that "[t]he M-22 Sign is an insignia of the State of Michigan" as stated in ¶ 59 of Petitioner's Second Amended Petition to Cancel;
- (32) The factual basis for Petitioner's allegation that "Registrant knew of Petitioner's prior rights in the M-22 Sign, knew of Petitioner's prior and extensive use of the M-22 Sign, and knew the extent to which the M-22 Sign pointed to the State of Michigan" as stated in ¶ 62 of Petitioner's Second Amended Petition to Cancel;
- (33) The factual basis for Petitioner's allegation that "Registrant knew, or had at least no reasonable basis for believing otherwise, that its use of the M-22 Sign would create a likelihood of confusion as to the source of the associated goods and services" as stated in ¶ 62 of Petitioner's Second Amended Petition to Cancel;
- (34) The factual basis for Petitioner's allegation that "Registrant was not using the mark M22 M22ONLINE.COM on all the goods identified in application Serial No. 78963038 when it filed the application, and... is not currently using the mark on all the goods identified in the application" as stated in ¶ 66 of Petitioner's Second Amended Petition to Cancel;
- (35) The factual basis for Petitioner's allegation that "Petitioner has used the M-22 Sign continuously in interstate commerce for nearly a century, in association with providing traffic management services, providing road and traffic information, and facilitating the safe and efficient travel of travelers within its borders" as stated in ¶ 70 of Petitioner's Second Amended Petition to Cancel;

- (36) The factual basis for Petitioner's allegation that, "[t]hrough Petitioner's use of the M-22 Sign, the public has come to recognize the sign as signifying Petitioner, its services, and specific geographic areas within Michigan" as stated in ¶ 72 of Petitioner's Second Amended Petition to Cancel;
- (37) The factual basis for Petitioner's allegation that, "[t]hrough Petitioner's use of the M-22 Sign, Petitioner has built up extensive and valuable goodwill in the M-22 Sign" as stated in ¶ 73 of Petitioner's Second Amended Petition to Cancel;
- (38) The factual basis for Petitioner's allegation that "Registrant's use and registration of the M-22 Sign is likely to cause confusion, deception, and mistake as to the origin of Registrant's products and to confuse, mislead and deceive members of the public into believing that Registrant's goods originate from, or are sponsored, approved or licensed by Petitioner, or are in some way connected to Petitioner" as stated in ¶ 75 of Petitioner's Second Amended Petition to Cancel;
- (39) The factual basis for Petitioner's allegation that "[t]he primary significance of the M-22 Sign is the generally known region of Northern Michigan, the location of Petitioner's M-22 highway" as stated in ¶ 83 of Petitioner's Second Amended Petition to Cancel;
- (40) The factual basis for Petitioner's belief that, when used on or in connection with Registrant's retail store services, the M-22 sign is primarily merely geographically descriptive of them;

- (41) The factual basis for Petitioner's allegation that "[t]he M-22 Sign has not acquired secondary meaning" as stated in ¶ 83 of Petitioner's Second Amended Petition to Cancel;
- (42) The factual basis for Petitioner's belief that the Manual on Uniform Traffic Control Devices, as supplemented and adopted by Petitioner, applies to Registrant;
- (43) The factual basis for Petitioner's belief that the Manual on Uniform Traffic Control Devices, as supplemented and adopted by Petitioner, is legally effective as against Registrant, as referenced in the Board's Order denying the parties' cross-motions for summary judgment on March 9, 2016;
- (44) The factual basis for Petitioner's belief for that Registrant's use of the M22 Marks can be considered unlawful;
- (45) All correspondence received by the State of Michigan concerning its failure to comply with or adhere to the Manual on Uniform Traffic Control Devices or regulations of the Federal Highway Administration or Department of Transportation of the United States of America;
- (46) The State of Michigan's recognition of M22, LLC as one Michigan's "50 Companies to Watch;"
- (47) The State of Michigan's recognition of M22, LLC, and its use of M22, LLC as a representative of reasons to do business in Michigan, in its Pure Michigan advertising campaign;
- (48) The State of Michigan's use of M22, LLC in the Pure Michigan "Official State Travel Guide;"

- (49) The State of Michigan's adoption and enforcement of the Michigan Manual on Uniform Traffic Control Devices against third parties.

Respectfully Submitted,



Date: April 14, 2016

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CERTIFICATE OF SERVICE

I, John Di Giacomo, an attorney, hereby certify that I served a true and correct copy of this Notice of Discovery Deposition of the State of Michigan on counsel of record on April 14, 2016 via electronic mail. Respectfully Submitted,



Date: April 14, 2016

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**PETITIONER STATE OF MICHIGAN'S BRIEF IN
REPLY TO RESPONDENT'S RESPONSE TO THE
STATE'S MOTION FOR PARTIAL SUMMARY
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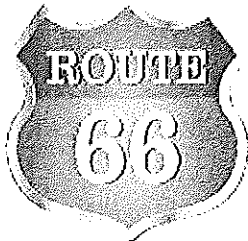
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Word Mark	ROUTE 66
Goods and Services	IC 032. US 045 046 048. G & S: beers, non-alcoholic beers, preparations for making beers, preparations for making non-alcoholic beers; soft drinks, namely, carbonated soft drinks, low calorie soft drinks, non-carbonated soft drinks; energy drinks; fruit flavoured soft drinks; fruit based soft drinks; drinking water; flavoured bottled water; mineral and carbonated waters
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	18.15.03 - Other road signs
Serial Number	85859535
Filing Date	February 25, 2013
Current Basis	44E
Original Filing Basis	1B;44D
Published for Opposition	September 17, 2013
Registration Number	4442767
Registration Date	December 3, 2013
Owner	(REGISTRANT) Lodestar Anstalt anstalt LIECHTENSTEIN Lova-Center P.O. Box 1150 Vaduz LIECHTENSTEIN FL-9490
Attorney of Record	David A. Plumley

Prior 3401675;4254249

Registrations

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the stylized words "ROUTE 66" on a highway shield sign.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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HOT ROD UHP

Word Mark	ROUTE 66 TIRE AND RUBBER HOT ROD UHP
Goods and Services	IC 012. US 019 021 023 031 035 044. G & S: Tires for Vehicles. FIRST USE: 20110920. FIRST USE IN COMMERCE: 20111020
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon 24.01.03 - Shields or crests with letters, punctuation or inscriptions contained therein or superimposed thereon
Serial Number	85237613
Filing Date	February 9, 2011
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	August 23, 2011
Registration Number	4116123
Registration Date	March 20, 2012
Owner	(REGISTRANT) Hubbard Global Group LIMITED LIABILITY COMPANY TEXAS 649 Meadow Hill Road Fort Worth TEXAS 76108
Attorney of Record	Lewis D. Schwartz
Prior Registrations	3788660;3895443;3959959
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TIRE AND RUBBER" AND "HOT ROD UHP" APART FROM THE MARK AS SHOWN
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of Shield that says "Route 66 Tire and Rubber", followed by the words "Hot Rod UHP".

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark ROUTE 66 WHEELS
Goods and Services IC 012. US 019 021 023 031 035 044. G & S: Tyres and inner tubes for the wheels of forestry vehicles; Vehicle wheel hub assemblies; Vehicle wheel rim protectors; Vehicle wheel rims; Vehicle wheel rims and structural parts therefor; Vehicle wheels; Wheel bearing kits for use with land vehicles; Wheel bearings for land vehicles; Wheel disks for vehicles; Wheel hubs; Wheel rims; Wheel rims for motor cars; Wheel sprockets; Wheel suspensions; Wheeled platforms, namely, platforms having non-motorized wheels designed for towing lawn and turf implements; Wheels. FIRST USE: 20110218. FIRST USE IN COMMERCE: 20110322
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 18.15.03 - Other road signs
 26.09.21 - Squares that are completely or partially shaded
Serial Number 85114400
Filing Date August 24, 2010
Current Basis 1A
Original Filing Basis 1B
Published for Opposition January 18, 2011
Registration Number 3959959
Registration Date May 10, 2011
Owner

(REGISTRANT) Hubbard Global Group LIMITED LIABILITY COMPANY TEXAS 649 Meadow Hill
Road Fort Worth TEXAS 76108

Attorney of
Record Lewis D. Schwartz

Prior
Registrations 3788660

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WHEELS" APART FROM THE MARK
AS SHOWN

Description of
Mark Color is not claimed as a feature of the mark. The mark consists of the stylized text "Route 66
Wheels" inside a shield.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead
Indicator LIVE

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Word Mark	PRODUCTIONS 495
Goods and Services	IC 041. US 100 101 107. G & S: Entertainment, namely, production of television programs. FIRST USE: 20070801. FIRST USE IN COMMERCE: 20070822
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	18.15.03 - Other road signs
Serial Number	85170754
Filing Date	November 5, 2010
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 19, 2011
Registration Number	3989306
Registration Date	July 5, 2011
Owner	(REGISTRANT) 495 Productions, Inc. CORPORATION CALIFORNIA 4222 Burbank Blvd., 2nd Floor Burbank CALIFORNIA 91505
Attorney of Record	Jill Varon
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PRODUCTIONS" APART FROM THE MARK AS SHOWN
Description of Mark	The color(s) red, white and blue is/are claimed as a feature of the mark. The mark consists of a shield outlined in white. The shield consisting of the word "PRODUCTIONS" on the upper-half of the shield in white lettering upon a solid red background, and the lower-half of the shield contains

the number "495" in white lettering upon a solid blue background. There is a thin white line separating the red and blue portions of the shield.

Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

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Word Mark	INTERSTATE IWS
Goods and Services	<p>IC 037. US 100 103 106. G & S: solid waste landfill services. FIRST USE: 19981207. FIRST USE IN COMMERCE: 19981207</p> <p>IC 039. US 100 105. G & S: transportation of waste and recycled materials. FIRST USE: 19981207. FIRST USE IN COMMERCE: 19981207</p> <p>IC 040. US 100 103 106. G & S: Waste treatment; waste management and waste incineration services; sorting of waste and recyclable material; conversion utilization, namely, capturing and converting landfill gas into electricity and useful steam; generation of power; consultancy services in the field of waste treatment. FIRST USE: 19981207. FIRST USE IN COMMERCE: 19981207</p>
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	18.15.03 - Other road signs
Serial Number	85000773
Filing Date	March 29, 2010
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	September 20, 2011
Registration Number	4065436
Registration Date	December 6, 2011
Owner	(REGISTRANT) Interstate Waste Services Holding Co., Inc. CORPORATION DELAWARE 500 N. Franklin Turnpike, Suite 212 Ramsey NEW JERSEY 07446

**Assignment
Recorded** ASSIGNMENT RECORDED

**Attorney of
Record** Robert W. Smith

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INTERSTATE" APART FROM THE MARK AS SHOWN

**Description of
Mark** Color is not claimed as a feature of the mark. The mark consists of a shield with the word "INTERSTATE" in the inside upper portion of the shield and the letters "IWS" in the inside lower portion of the shield, with a line separating the upper from the lower portion.

Type of Mark SERVICE MARK

Register PRINCIPAL

**Live/Dead
Indicator** LIVE

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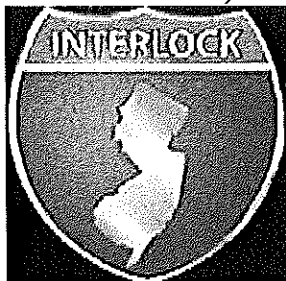
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Word Mark INTERLOCK

Goods and Services IC 037. US 100 103 106. G & S: Installation, maintenance and repair of breath analysis systems for vehicles. FIRST USE: 20100122. FIRST USE IN COMMERCE: 20100122

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design 01.17.11 - Maps of states of the United States, excluding Texas

Search Code 18.15.03 - Other road signs
 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon
 24.01.03 - Shields or crests with letters, punctuation or inscriptions contained therein or superimposed thereon
 26.05.21 - Triangles that are completely or partially shaded
 26.05.25 - Triangles with one or more curved sides

Serial Number 85612274

Filing Date April 30, 2012

Current Basis 1A

Original Filing Basis 1A

Published for Opposition January 8, 2013

Registration Number 4307988

Registration Date March 26, 2013

Owner (REGISTRANT) Interlock Device of New Jersey, LLC LIMITED LIABILITY COMPANY NEW JERSEY 424 Commerce Lane, Suite 3 West Berlin NEW JERSEY 08091
 Anthony J. DiMarino, III

**Attorney of
Record**

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INTERLOCK" AND THE PICTORIAL REPRESENTATION OF THE STATE OF NEW JERSEY APART FROM THE MARK AS SHOWN

**Description
of Mark** The color(s) red, blue, white, silver and black is/are claimed as a feature of the mark. The mark consists of a shield with two equal crescent shaped indents at the top which meet at the middle of the top, entire shield outlined in a silver border. The shield is divided starting at the bottom and going approximately three quarters up the top in blue, with a silver design of the State of New Jersey outlined in black appearing in the blue portion of the shield. Above the blue portion is a white line which extends horizontally across the shield. Above the white line is a red portion with the word "INTERLOCK" in capital silver letters outlined in black appearing across the red portion of the shield design.

Type of Mark SERVICE MARK

Register PRINCIPAL

**Live/Dead
Indicator** LIVE

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EXHIBIT 58



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H W Y



Word Mark	HWY 1
Goods and Services	IC 033. US 047 049. G & S: Alcoholic beverages except beers. FIRST USE: 20120427. FIRST USE IN COMMERCE: 20120427
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	18.15.03 - Other road signs 24.01.04 - Shields or crests with numbers contained therein or superimposed thereon
Serial Number	85846778
Filing Date	February 11, 2013
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 7, 2013
Registration Number	4372637
Registration Date	July 23, 2013
Owner	(REGISTRANT) Sutter Home Winery, Inc. CORPORATION CALIFORNIA 100 St. Helena Hwy South, P.O. Box 248 St. Helena CALIFORNIA 94574
Attorney of Record	J. Scott Gerien
Prior Registrations	4164819
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the word "HWY" appearing above the image of a shield-shaped highway sign within which appears the number "1".
Type of Mark	TRADEMARK
Register	PRINCIPAL

Live/Dead
Indicator LIVE

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Word Mark US-1

Goods and Services IC 035. US 100 101 102. G & S: Business project management services in the field of commercial lighting. FIRST USE: 20060331. FIRST USE IN COMMERCE: 20060331

IC 037. US 100 103 106. G & S: Installation in the field of commercial lighting; construction project management services in the field of commercial lighting; retrofitting existing lighting with LED luminaires. FIRST USE: 20060331. FIRST USE IN COMMERCE: 20060331

IC 042. US 100 101. G & S: Design project management services in the field of commercial lighting. FIRST USE: 20060331. FIRST USE IN COMMERCE: 20060331

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.01.03 - Star - a single star with five points
 18.15.03 - Other road signs
 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon
 24.01.03 - Shields or crests with letters, punctuation or inscriptions contained therein or superimposed thereon

Serial Number 85252709

Filing Date February 26, 2011

Current Basis 1A

Original Filing Basis 1B

Published for Opposition September 6, 2011

Registration Number 4158699

Registration Date June 12, 2012

Owner (REGISTRANT) IPT, LLC LIMITED LIABILITY COMPANY TEXAS 5225 Katy Freeway, Suite 350 Houston TEXAS 77007

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Richard A. Schafer

Prior Registrations 3310441

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the elements "US-1" in a shield design and a star that is above the letter "S" of the mark.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Word Mark	HERITAGE ROUTE 23
Goods and Services	IC 035. US 100 101 102. G & S: Promoting recreation and tourism in coastal Northeast Michigan. FIRST USE: 20100601. FIRST USE IN COMMERCE: 20100601
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.05.01 - Sun, rising or setting (partially exposed or partially obstructed); Sunrise 01.15.13 - Ripple (single wave); Waves, single 18.15.03 - Other road signs 24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon
Serial Number	85187150
Filing Date	November 30, 2010
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	June 14, 2011
Registration Number	4018569
Registration Date	August 30, 2011
Owner	(REGISTRANT) Northeast Michigan Council of Governments non-profit organization MICHIGAN 80 Livingston Blvd Suite 8 Gaylord MICHIGAN 49734
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HERITAGE ROUTE 23" APART FROM THE MARK AS SHOWN
Description of Mark	The color(s) black, white, orange, yellow, and blue is/are claimed as a feature of the mark. The mark consists of a yellow and orange sunburst over blue water with a white sunburst. A black "23" appears in the orange and yellow sunburst. White words "HERITAGE ROUTE" appear in the upper

black third of the mark. There is a single white line separating the upper third of the mark and the lower portion. The overall mark is in the shape of a US road shield, outlined in black.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead
Indicator LIVE

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